Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

●ress Mailing Label No.:
EV 362412322 US

REMARKS/ARGUMENTS

A. AMENDMENTS TO THE CLAIMS

Claims 1-27 remain in this application. Claims 1, 15 and 16 have been amended to correct typographical errors. Claim 1 has also been amended to correct a mistaken reference. No new matter has been added by these amendments.

B. CLAIM REJECTIONS

Claims 1-13 have been rejected by the examiner under 35 U.S.C. §103(a) as being unpatentable over Hanson et al. (U.S. Patent 6,457,045) (herein, Hanson) in view of Bowcutt et al. (U.S. Patent 6,308,328) (herein, Bowcutt). Claims 14-15 have been rejected by the examiner as unpatentable over Hanson in view of Bowcutt and further in view of Anderson et al. (U.S. Patent 4,290141) (herein, Anderson). Claims 16-27 have been rejected under by the examiner 35 U.S.C. §102(e) as being anticipated by Hanson.

1. Rejections under 35 U.S.C. §103(a)

Claims 1-13 have been rejected by the examiner under 35 U.S.C. §103(a) as being unpatentable over Hanson in view of Bowcutt.

In order for a patent claim to be obvious, the prior art must teach or suggest each and every limitation of the claimed invention. That is because the claim must be considered as a whole; it may not be distilled down to a "gist" for purposes of obviousness analysis. MPEP 8th Ed. §2121.02 (Rev. 1).

Independent claim 1 (as amended) recites the limitations:

> 1. A method for influencing dynamic community shared elements of content programming comprising:
>
> a plurality of participants obtaining electronic votes that they may later cast;
>
> a polling server periodically polling the plurality of participants over a network for their opinion concerning the content of programming;
>
> the plurality of participants casting their respective electronic votes concerning the content of programming via the network;
>
> the polling server receiving the electronic votes of the participants, tallying the

. Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

ress Mailing Label No.:
EV 362412322 US

electronic votes and reporting those results to a content server; and

the content server receiving the votes and retrieving content based upon the opinion expressed by the majority of majority of electronic votes.

In rejecting claim 1, the examiner found that Hanson disclosed each of these limitations. In particular, the examiner cited Col. 1, lines 52-59 of Hanson as teaching the limitation "obtaining electronic votes that they may later cast:"

> Many group choice tools are known that allow participants in a group to make choices in a choice making process. For example, participants can be polled to determine how they may vote in a particular election. Hanson, Col.1, lines 52-59.

The quoted language from Hanson is directed to the existing art in which participants vote in an election. However, the limitation of claim 1 of the present invention, "obtaining electronic votes that they may later cast," is not directed to voting, but to obtaining voting rights that may be used at a later time. The disclosure of the present application describes an embodiment implementing this limitation:

> Using the present invention, a network user registers with the broadcast system, be it a cable TV system or other type of broadcast system in a normal fashion. The network user is offered the ability to purchase vote tokens which are charged to the network users account. For example, each token may be worth fifty cents. Alternatively, the network user can purchase tokens which are worth multiple votes, for example, a ten-vote token for five dollars. Further, a network user can pay for various levels of network user interaction. For example, a network user may be a normal network user, a "gold" network user, or a "platinum" network user with each different level of network user having different weights for the vote for each network user. The network user would pay an additional premium for having an increased weight associated with the network user vote. All network users in the same class may start with a fixed set of tokens upon initiation of service subscription or at the beginning of a particular program. Application, page 4, line 19 through page 5, line 6.

Hanson does not disclose the acquisition or use of voting tokens for later use or voting tokens of varying weight. That is, Hanson does not view the right to vote separate from the "choice topic" (Hanson terminology) that is to be voted on. In Hanson, receipt of a "zaplet" constitutes the right to vote on the subject matter (the "choice topic") of the zaplet. Further, a participant has but one vote and cannot choose to vary the weight or influence of that vote. Claim 1 of the present invention reflects that the right to vote and the "choice topic" are distinct and severable. This is made clear by a subsequent limitation of claim 1 of the present invention

Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

Express Mailing Label No.:
EV 362412322 US

reciting "a polling server periodically polling the plurality of participants over a network for their opinion concerning the content of programming." A participant may be polled, but unless the participant has obtained an electronic vote, the participant may not respond to the poll by voting.

The examiner further determined that Hanson disclosed the limitation "the polling server receiving the electronic votes of the participants, tallying the electronic votes and reporting those results to a content server." Support for this conclusion was found in Col. 2, lines 57-63 and Col. 16, lines 64-66:

> Each of the dynamic content regions includes dynamic content. The network system also includes logic in communication with the database to asynchronously dynamically update and dynamically retrieve the dynamic content of the electronic medium stored in the database. Each of the dynamic content regions are updated with the dynamic content. The dynamic content includes at least one of the selected choices. Hanson, Col. 2, lines 57-63.

> The business logic may be configured to automatically determine the results of the poll based on the specified consensus. Col. 16, lines 64-66.

The "content" referred to by Hanson is not the content referred to in claim 16 of the present invention. Hanson uses "dynamic content" to describe the status of a zaplet at a point in time:

> The method uses an electronic medium having at least one dynamic content region that is stored in a database of a server. Input composed by the participants of the group or other external sources is accepted by the server to update the dynamic content region of the electronic medium in the server. The updating of the dynamic content region is preferably performed asynchronously relative to the sending and receiving of the input from any of the participants or external sources. In this way, the content of the electronic medium is always current. Hanson, Col. 4, line 23-32.

As used in Hanson, "dynamic content" is a data acquired via a zaplet at a point in time. For example, it reflects a tally of votes or selection of tasks. By contrast, the "content" referred to in claim 16 of the present invention is the programming content that will be displayed based on the results of the voting.

When applying a reference to the pending claims of an application, the pending claims must be "given their broadest reasonable interpretation consistent with the specification" *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), the court held that the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their

. Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

ress Mailing Label No.:
EV 362412322 US

ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). See, MPEP §2111 (8th Ed., Rev. 1). Applicant submits if the pending claims of the present application are examined with full appreciation of the meaning ascribed to the terms used in the claims by the specification (and not the meaning given to those terms by Hanson), it will become clear that Hanson does not teach the limitations of the pending claims.

Specifically, Hanson does not address "content" as that term is used the present invention. Additionally, Hanson does not disclose a "content server" as that term is used in claim 1 of the present invention. The language cited by the examiner at Col. 2, lines 57-63 does not address this limitation:

> The network system also includes logic in communication with the database to asynchronously dynamically update and dynamically retrieve the dynamic content of the electronic medium stored in the database. Each of the dynamic content regions are updated with the dynamic content. The dynamic content includes at least one of the selected choices. Hanson, Col. 2, lines 57-63.

As previously noted, the "dynamic content" referred to in Hanson is data acquired via a zaplet at a point in time. The content retrieved in claim 1 of the present invention is programming content retrieved from a content server. The selection of the programming content is determined by the opinion expressed by the majority of the electronic votes received. The dynamic content of Hanson is information about the opinions being expressed by those participating in the zaplet and is not, therefore, the programming content of the claimed invention.

As claim 1 as originally claimed and in its amended form recites limitations not in the combination of Hanson and Bowcutt, claim 1 of the present invention is patentable over Hanson in view of Bowcutt. Applicant submits that claim 1, as amended, is allowable over the cited prior art.

Dependent claims 2-13 were rejected by the examiner as unpatentable over Hanson in

Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

Express Mailing Label No.:
EV 362412322 US

view of Bowcutt. Dependent claims 14-15 were rejected by the examiner as unpatentable over

Hanson in view of Bowcutt and further in view of Anderson et al. As claims 2-15 depend from

claim 1 and comprise all of the limitations of claim 1 (as amended), claims 2-15 also recite

limitations not disclosed in the combination of Hanson and Bowcutt and the combination of

Hanson, Bowcutt, and Anderson. For this reason, dependent claims 2-15 are also patentable over

the cited prior art.

2.   **Rejections under 35 U.S.C. §102(e)**

Claims 16-17 were rejected by the examiner under 35 U.S.C. §102(e) as being anticipated

by Hanson. A claim is anticipated only if each and every element as set forth in the claim is

found, either expressly or inherently described, in a single prior art reference. MPEP §2131 8th

Ed. (Rev. 1).

Independent claim 16 recites the following limitations:

> a plurality of participant devices each associated with a participant
> connected to a network, the participant devices further comprising
> instructions for obtaining and casting electronic votes;

> a transaction server connected to the network further comprising
> instructions for receiving requests from the participant devices to obtain
> electronic votes, and instructions for delivering electronic votes to the
> participant devices over the network;

> a polling server connected to the network for receiving the electronic votes
> from the participant devices in response to polls sent by the polling server;

> the polling server further comprising instructions for receiving and
> tallying the electronic votes received from the participant devices, and
> reporting the tally; and

> a content server connected to the polling server for receiving the tally of
> the electronic votes, the content server further comprising instructions for
> modifying content served to the participant devices in response to the tally
> of electronic votes.

In rejecting claim 16, the examiner found that Hanson disclosed each of these limitations.

In particular, the examiner cited Col. 1, lines 52-59 of Hanson (set forth below) as teaching the

limitation "a plurality of participant devices each associated with a participant connected to a

network, the participant devices further comprising instructions for obtaining and casting

electronic votes." Hanson, does not, however, teach this limitation:

Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

Express Mailing Label No.:
EV 362412322 US

Many group choice tools are known that allow participants in a group to make choices in a choice making process. For example, participants can be polled to determine how they may vote in a particular election. Hanson, Col. 1, lines 52-59.

The quoted language from Hanson is directed to the existing art in which participants vote in an election. The limitation recited in claim 16 of the present invention, "the participant devices further comprising instructions for obtaining and casting electronic votes," is not solely directed to voting, but to obtaining voting rights. The disclosure of the present application describes an embodiment implementing this limitation:

> Using the present invention, a network user registers with the broadcast system, be it a cable TV system or other type of broadcast system in a normal fashion. The network user is offered the ability to purchase vote tokens which are charged to the network users account. For example, each token may be worth fifty cents. Alternatively, the network user can purchase tokens which are worth multiple votes, for example, a ten-vote token for five dollars. Further, a network user can pay for various levels of network user interaction. For example, a network user may be a normal network user, a "gold" network user, or a "platinum" network user with each different level of network user having different weights for the vote for each network user. The network user would pay an additional premium for having an increased weight associated with the network user vote. All network users in the same class may start with a fixed set of tokens upon initiation of service subscription or at the beginning of a particular program. Application, page 4, line 19 through page 5, line 6.

Hanson does not disclose instructions for obtaining and casting electronic votes of varying weight. That is, Hanson does not view the right to vote separate from the "choice topic" (Hanson terminology) that is to be voted on. In Hanson, receipt of a zaplet constitutes the right to vote on the subject matter of the zaplet. Claim 16 of the present invention reflects that the right to vote and the "choice topic" are distinct and severable. This is made clear by the limitation:

> a transaction server connected to the network further comprising instructions for receiving requests from the participant devices to obtain electronic votes, and instructions for delivering electronic votes to the participant devices over the network;

by which a participant device obtains an electronic vote and the limitation:

> a polling server connected to the network for receiving the electronic votes from the participant devices in response to polls sent by the polling server;

providing a means for those votes to be cast. A participant may be polled, but unless the

Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003

Express Mailing Label No.:
EV 362412322 US

participant has obtained one or more electronic votes, the participant may not respond to the poll by voting. Hanson simply does not disclose the acquisition of electronic votes or means to deliver them or the polling of voters who may or may not possess votes to cast.

The examiner further determined that Hanson disclosed the limitation "a content server connected to the polling server for receiving the tally of the electronic votes, the content server further comprising instructions for modifying content served to the participant devices in response to the tally of electronic votes." The examiner cited text at Col. 2, lines 57-63 of Hanson as support for this conclusion:

> Each of the dynamic content regions includes dynamic content. The network system also includes logic in communication with the database to asynchronously dynamically update and dynamically retrieve the dynamic content of the electronic medium stored in the database. Each of the dynamic content regions are updated with the dynamic content. The dynamic content includes at least one of the selected choices. Hanson, Col. 1, lines 52-59.

The "content" referred to by Hanson is not the content referred to in claim 16 of the present invention. Hanson uses "dynamic content" to describe the status of a zaplet at a point in time:

> The method uses an electronic medium having at least one dynamic content region that is stored in a database of a server. Input composed by the participants of the group or other external sources is accepted by the server to update the dynamic content region of the electronic medium in the server. The updating of the dynamic content region is preferably performed asynchronously relative to the sending and receiving of the input from any of the participants or external sources. In this way, the content of the electronic medium is always current. Hanson, Col. 4, line 23-32.

As used in Hanson, "dynamic content" is a data acquired via a zaplet at a point in time. For example, it reflects a tally of votes or selection of tasks. By contrast, the "content" referred to in claim 16 of the present invention is the programming content that will be displayed based on the results of the voting. Hanson does not address "content" as that term is used the present invention.

As previously noted, the "dynamic content" referred to in Hanson is data acquired via a zaplet at a point in time. The content retrieved in claim 16 of the present invention is programming content retrieved from a content server. The selection of the programming content is determined by the opinion expressed by the majority of the electronic votes received. The

Appl. No. 09/688,281
Amdt. Dated March 19, 2004
Reply to Office Action of Nov. 6, 2003
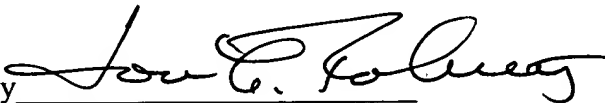
Express Mailing Label No.:
EV 362412322 US

dynamic content of Hanson is information about the opinions being expressed by those participating in the zaplet and is not, therefore, the programming content of the claimed invention. See, MPEP §2111 (8th Ed., Rev. 1) and related discussion above.

As claim 16 as originally claimed and in its amended form recite limitations not disclosed by Hanson, claim 16 is not anticipated by, and is patentable over, Hanson. Applicant submits that claim 16, as amended, is allowable over the cited prior art.

Claims 17-27 depend from claim 16 and comprise all of the limitations of claim 16. Claims 17-27 therefore recite limitations not disclosed in Hanson and are, therefore, not anticipated by Hanson. Applicant submits that claims 17-27 are allowable over the cited prior art.

Applicant respectfully requests reconsideration of the current rejection. In view of the responses and remarks made above, Applicant further requests that that a timely Notice of Allowance be issued in this case. Should any further questions arise concerning this application or in the event the above amendments do not place the application in condition for allowance, Applicant respectfully requests a telephone interview. Attorney for the Applicant may be reached at the number listed below.

Respectfully Submitted,

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